

- SUBJECT:** Requiring impact statement for agency rules affecting small businesses
- COMMITTEE:** Economic Development — favorable, without amendment
- VOTE:** 4 ayes — Deshotel, Morrison, Ortiz, Veasey
0 nays
3 absent — Straus, Kolkhorst, Dunnam
- SENATE VOTE:** On final passage, May 8 — 30-1 (Shapleigh)
- WITNESSES:** (*On House companion, HB 3218 by Elkins:*)
For — Lance Lively, National Federation of Independent Business;
(*Registered, but did not testify:* Michele Gregg, Texas Apartment Association; Bill Hammond, Texas Association of Business)
Against — Cyrus Reed, Lone Star Chapter of the Sierra Club
- BACKGROUND:** Government Code sec. 2006.002 requires a state agency to minimize adverse economic effects on small businesses of a rule it is considering to the extent that doing so is legal and feasible given the purpose of the statute under which the rule is to be adopted. "Small business" is defined as a legal entity that is:
- formed to make a profit;
 - independently owned and operated; and
 - has fewer than 100 employees or less than \$1 million in annual gross receipts.
- Subsec. 2006.002(c) requires an agency to prepare a statement of the effect that a rule would have on small businesses before adopting a rule that would have an adverse effect. The statement must include an analysis of the cost of compliance with the rule for small businesses and a comparison of the cost of compliance between small businesses and the largest affected business. This statement must be published with the proposed rule in the Texas Register.
The federal Regulatory Flexibility Act of 1980 requires federal agencies to

consider the effect of proposed regulations on small businesses. Agencies are required to examine alternative regulations that would minimize the impacts on small businesses while still meeting the purposes of the regulations.

DIGEST: SB 700 would change the definition of "small business" in sec. 2006.001 to include a business with less than \$6 million in annual gross receipts.

For any rule that could have an adverse economic effect on small businesses, a state agency would have to prepare:

- an economic impact statement estimating the number of small businesses subject to the proposed rule, projecting the economic impact of the rule on small businesses, and describing alternative methods of achieving the purpose of the proposed rule; and
- a regulatory flexibility analysis, including the agency's consideration of alternatives to achieve the purpose of the proposed rule.

The analysis would have to consider regulatory methods that would accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses, to the extent consistent with the health, safety, and environmental and economic welfare of the state.

Copies of these reports would have to be published in the Texas Register and provided to the House and Senate committees with jurisdiction over the proposed rule.

The bill would direct the attorney general, in consultation with the comptroller, to assist state agencies in producing the economic impact statement.

The bill would take effect September 1, 2007, and would apply to a rule adopted on or after January 1, 2008.

**SUPPORTERS
SAY:**

SB 700 would implement the principles of the federal Regulatory Flexibility Act by applying them to agency rulemaking at the state level in Texas. The bill would implement recommendations from state model legislation from the U.S. Small Business Administration's Office of Advocacy to improve the regulatory climate for small businesses in the state. With this bill, Texas would join the 19 other states that have

implemented the principles of small business regulatory flexibility since 2002.

The bill would adopt a reasonable definition of small business by including firms with less than 100 employees and up to \$6 million in annual gross receipts. The bill would require an agency considering a rule to examine in detail the economic impact of the rule on small businesses. The agency review also would require consideration of less onerous alternative regulations that could ease the burden on smaller firms while maintaining agency objectives. Because the cost of compliance with agency rules often can be more costly for smaller firms than large businesses, it is appropriate to minimize this discrepancy whenever possible. Small businesses form the backbone of the Texas economy, and this bill would ensure a strong economic environment in which to encourage entrepreneurial activity for the future.

Texas government operates with a part-time, biennial Legislature, meaning that detrimental agency rules may be in effect for more than a year before they can be addressed and improved by lawmakers. SB 700 would implement a safeguard in the rulemaking process to ensure that the interests of small businesses are effectively represented.

**OPPONENTS
SAY:**

It is questionable whether a firm with close to 100 employees and up to \$6 million in gross receipts truly is a "small business." In addition, by expanding the requirement that agencies consider regulatory policies favorable to small business whenever a decision "may" have an adverse economic impact, SB 700 would delegate to agencies policy decisions that should be specified in statute. The Legislature should consider the impact of policies on small businesses, and the primary concern of agencies should be effective implementation of those policies by rule.

NOTES:

The House companion bill, SB 3218 by Elkins, was considered in a public hearing in the Economic Development Committee on April 11 and left pending.